IN THE HIGH COURT OF UTTARNCHAL AT NAINITAL

Writ Petition No. 1462 of 2002 (S/B)

1. State of Uttaranchal
   Through Principal Secretary (Finance)
   Secretariat Uttaranchal
2. Commissioner Trade Tax,
   Uttaranchal, Dehradun.

…… Petitioners

Versus

1. U.P. State of Public Service Tribunal No. 1,
   Lucknow.
2. Raghubir Singh
   S/o Sri Banke Lal,
   Presently posted as
   Assistant Commissioner (Assessment) Trade Tax
   Kashipur, Udham Singh Nagar

…….Respondents

Mr. J.P. Joshi, Addl. Chief Standing Counsel for the State.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Prafulla C. Pant, J.

(Per Hon'ble the Chief Justice)

1. Heard Mr. J.P. Joshi, Additional Chief Standing Counsel appearing for the State.

2. We do not find any merits in this writ petition. The writ petition is against the order passed by the U.P. State Public Services Tribunal, Lucknow. By way of facts, it may be stated that this was an original application presented by one Raghubir Singh for quashing the adverse annual remark of the year 1991-92 and also the order dated 25.10.1994 by which the representation filed by the original petitioner i.e. respondent No. 2 was rejected. It was pointed out in his original application that the reporting officer had graded the respondent No. 2 to be a very good officer and the commissioner Sales Tax recorded

this entry and had also approved the entry. This was for the period 01.04.1991 to 24.07.1991.

3. The reporting officer's entry for the subsequent period from 25.07.1991 to 31.03.1992 was also approved by the Commissioner Sales Tax, U.P., Sri Prashant Kumar Misra. However, he recorded his opinion that the officer had not achieved the targets and his explanation there for was not satisfactory and, therefore, he graded the officer as a bad officer. It was against this that the original application was filed.

4. Needless to mention that against the downgrading of the original petitioner before the Public Services Tribunal (hereinafter referred to as the Tribunal), he had made a representation and very strangely, his representation came to be rejected by none else but the same Shri Prashant Kumar Misra, who had, by then become the Secretary Sales Tax. This was found to be incorrect by the Tribunal and the Tribunal found that if the representation went to the same officer, he should have sent the same for being disposed of to some other officer of the equal level under Rules 4 of the Uttar Pradesh Government Servants (disposal of representation against adverse annual confidential reports and allied matters) Rules, 1995 (hereinafter referred to as the said Rules). The Tribunal, therefore, came to the conclusion that the rejection of the representation by Shri Prashant Kumar Misra was bad in law and, as such, the representation was not disposed of by a proper officer within the time prescribed under Rule 4 of the said Rules and, therefore, concerned officer shell get the advantage of Rules 5 of the said Rules, which provides that if the representation is not disposed of within the period prescribed under Rules 4 of the said Rules, the adverse report would not be treated adverse for the purposes of promotion, crossing of efficiency bar and other service matters etc. We do not find anything wrong with this logic by the learned Member of the Tribunal it was imperative on the part of the concerned authority to have sent the representation to some other officer and that was the minimum

requirement of law of natural justice. He could not have decided the representation against the adverse entry recorded by him, alone. We do not, therefore, find anything wrong in this approach.

5. The leaned counsel for the Government, however, contended that the learned Tribunal had no jurisdiction since this order has been passed on 21.12.2000 i.e. after 09.11.2000 when Uttaranchal State came into being. The learned counsel invites our attention to Section 91 of the U.P. Reorganization Act, 2000, however, considering the provisions of Section 91 of the U.P. Reorganization Act, 2000, we must observe that on the day when the order was passed there was no Tribunal in existence for the State of Uttaranchal and, therefore, there was no lack of jurisdiction on the part of the Tribunal.

6. The writ petition has no merits and it is dismissed.

(P.C. Pant, J.)
02.03.2005

(V.S. Sirpurkar, C.J.)
02.03.2005

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